UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
GLENN GUILLORY,
Defendant.

Case No. 14-cr-00607-PJH-3

PRETRIAL ORDER NO. 2

Doc. nos. 166, 179, 185

This matter came on for status and pretrial conference on March 15, 2017. Following severance of defendant Glenn Guillory from co-defendant Thomas Joyce for trial, and the continuance of Guillory's trial date due to defense counsel's medical condition, the parties were given leave to file supplemental pretrial papers, but neither did so. The court rules on the pending motions in limine and other pretrial matters as follows:

I. Motions in Limine

A. Government's Motions in Limine (doc. no. 179)

1. The government's motion in limine ("MIL") No. 1 to prohibit defendant from introducing evidence or argument that the bid-rigging agreements were reasonable, or that the victims were negligent about the bid-rigging conduct, is GRANTED pursuant to the court's earlier ruling in Pretrial Order No. 1 denying defendants' motion to adjudicate the Sherman Act count pursuant to the rule of reason. Doc. no. 139. There, the court held that bid-rigging is widely recognized as a form of price-fixing, which is "conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." *Northern Pac. Ry.*

Co. v. U.S., 356 U.S. 1, 5 (1958). The court further ORDERS that the government shall refrain from using the term "victims" when referring to the banks, trustees, and beneficiaries, to avoid unnecessary confusion about harm given that the government does not need to prove any injury or financial loss as an element of bid-rigging, and shall instead refer to them as banks, trustees and beneficiaries.

2. The government's MIL No. 2 to admit evidence of cooperating witnesses' guilty pleas and plea agreements, as properly considered by the jury in evaluating witness credibility, is GRANTED subject to the following procedures:

(a) The truthfulness provisions of the plea agreements must remain redacted, unless the witness's credibility is attacked. *See U.S. v. Monroe*, 943 F.2d 1007, 1013 (9th Cir. 1991) ("a reference to the 'truthful testimony' provisions of a witness's agreement with the government does not constitute vouching if it is made in response to an attack on the witness's credibility because of his plea bargain").

(b) The government's questioning during its case-in-chief is limited to the existence and terms of the guilty pleas and plea agreements, including the factual basis of the plea, the fact that the cooperator has yet to be sentenced, and the hope of receiving a reduced sentence partly due to their testimony at trial.

(c) References to the potential sentence or potential maximum statutory sentence that the cooperator could receive must be redacted because it may signal to the jury the punishment that defendant is facing, though that is a prohibited consideration; however, the court may permit evidence of a mandatory minimum sentence that a witness faces in the absence of a motion by the government. *See U.S. v. Larson*, 495 F.3d 1094, 1106 (9th Cir. 2007) (en banc) (district court may prohibit cross-examination regarding the potential maximum statutory sentence that the witness faces, which lacks significant probative force because a defendant seldom receives the maximum penalty permissible under the statute of conviction; by contrast, the mandatory minimum sentence that a witness

will receive in the absence of a government motion is "highly relevant to the witness' credibility").

(d) To minimize the risk of undue prejudice to defendant by introducing evidence of the cooperating witnesses' plea agreements, the court will give limiting instructions based on Ninth Circuit Model Criminal Jury Instruction 4.9 and the ABA model instructions for criminal antitrust cases, as proposed by the parties. *See* Proposed Instruction Nos. 37, 38 (doc. no. 191).

Under settled Ninth Circuit authority recognizing the probative value of plea agreements for evaluating witness credibility, the court holds that the probative value of evidence of the plea agreements, as limited herein, is not "substantially outweighed by a danger of" unfair prejudice to defendant pursuant to FRE 403. *U.S. v. Halbert*, 640 F.2d 1000, 1004 (9th Cir. 1981) ("evidence of the plea is relevant to credibility regardless whether government or defendant initiates inquiry about it"); *United States v. Anderson*, 532 F.2d 1218, 1230 (9th Cir. 1976).

3. The government's MIL No. 3 to exclude any evidence or argument impeaching a witness by introducing evidence of conviction of a crime pursuant to FRE 609(a) is GRANTED as unopposed as to witness Vesce, given that none of the prior convictions disclosed by the government meet the standard for impeachment under the rules of evidence. With respect to witness Barta, the government withdrew its MIL No. 3 to exclude evidence of Barta's 2007 application for a mortgage and home-equity line of credit after conceding its admissibility as impeachment evidence. The government's MIL No. 3 with respect to excluding evidence of citizen complaints is GRANTED on the ground that the prejudicial effect would outweigh any limited probative value of the complaints from private citizens, which were not vetted for accuracy or investigated, and the complaints from private citizens and the California Dept. of Transportation which are not relevant to the bid-rigging conspiracy and/or are not probative of character for truthfulness.

4. The government's MIL No. 4 to admit business records and public records under FRE 803(6), (8) and (15), and self-authenticating documents pursuant to FRE 902(1), (4) and (11) is PROVISIONALLY GRANTED, subject to objections that the defense may raise at trial as to specific documents.

5. The government's MIL No. 5 to exclude evidence or argument about nontestifying coconspirators is GRANTED as unopposed. If either party seeks to refer to a nontestifying coconspirator's plea agreement or pending indictment, the party must first make a proffer for its admissibility.

6. With respect to the government's notice of intent to admit summary charts pursuant to FRE 611(a), doc. no. 189, the court determines that the charts proffered by the government would avoid wasting time from introducing all the underlying documents. The court further determines that the charts do not appear to be argumentative or to include selective information from the underlying documents, as with the summary charts that were ruled inadmissible in the first trial in *U.S. v. Florida*, CR 14-582. The court will admit non-argumentative charts as summary charts under FRE 611(a). The charts may also be admissible or useable as demonstratives under FRE 1006. *See U.S. v. Gardner*, 611 F.2d 770, 776 (9th Cir. 1980) (summary chart was properly admitted where use of the chart in court contributed to the clarity of the presentation to the jury, avoided needless consumption of time and was a reasonable method of presenting the evidence).

7. The government has indicated its intent to introduce, under FRE 404(b), two sets of ledgers seized by the FBI from the office of Community Fund, which is owned by Michael Marr who is charged in a separate case, *U.S. v. Marr,* CR 14-580. The government contends that as to defendant Guillory, the Renquist and Joyce ledgers "help explain the purpose of the exact same ledger for Guillory that Community Fund maintained (for example, they will help to establish that the Guillory/Community Fund ledger in fact tracks bid-rigging payments, not payments for some other purpose)." Doc. no. 221 at 2. The government stated in the initial pretrial filings that

Renquist would testify about the form and purpose of the Community Fund ledgers because the exact same type of ledgers were used to track Contra Costa County round payments, *id.* at 3, but Renquist will not be called as a witness in this trial. The government represented at the hearing that it will call witness Bishop to authenticate the ledgers, and the court will reserve ruling whether his testimony is sufficient to authenticate the ledgers pursuant to FRE 901(a). "The government need only make a prima facie showing of authenticity, as the rule requires only that the court admit evidence if sufficient proof has been introduced so that a reasonable juror could find in favor of authenticity or identification. The government must also establish a connection between the proffered evidence and the defendant." *United States v. Tank*, 200 F.3d 627, 630 (9th Cir. 2000) (citations and internal marks omitted). Accordingly, the ledgers seized from Community Fund's offices will not be admitted unless the government establishes a proper foundation to authenticate those records, such as through the testimony of a witness with personal knowledge. FRE 901(b)(1) ("Testimony that an item is what it is claimed to be.").

B. Defendant's Motions in Limine

1. Defendant's MIL No. 1 to exclude references to other bid-rigging trials, which was jointly filed with co-defendant Joyce, is DENIED on the ground that evidence related to other bid-rigging trials may be introduced as relevant background, subject to the instruction that the parties should minimize any references to trials involving bid-rigging in counties other than Contra Costa County. Doc. no. 185.

2. Defendant's MIL No. 2 to grant additional peremptory challenges is DENIED AS MOOT following severance of Joyce and Guillory's trials.

3. Defendant's pretrial conference statement raised requests for disclosures. Doc. no. 193. The government confirmed that the requested materials in its possession have been produced to the defense, and that it will continue to meet its disclosure obligations. The government has disclosed the identity of the confidential source, who will testify under his or her true name.

II. Coconspirator Statements

A. Legal Standard

In order for a coconspirator statement to be *admissible* at trial under Federal Rule of Evidence 801(d)(2)(E), the prosecution must show by a preponderance of the evidence that:

(1) the conspiracy existed when the statement was made;

(2) the defendant had knowledge of, and participated in, the conspiracy; and

(3) the statement was made "in furtherance" of the conspiracy.

United States v. Larson, 460 F.3d 1200, 1212 (9th Cir. 2006), *adopted in relevant part on reh'g en banc*, 495 F.3d 1094, 1096 n.4 (9th Cir. 2007). However, the *introduction* of coconspirator statements is distinct from the issue of *admissibility*. That is in part because the court considers all of the evidence, even the defendant's evidence, in making the ultimate admissibility determination. *See* GRAHAM, 30B FEDERAL PRACTICE & PROCEDURE, EVIDENCE § 7025 at 303-04 (2011 interim ed.) ("[a]t the conclusion of the presentation of evidence, the trial court on motion must determine *on all the evidence including evidence offered by the defendant* whether the government has established the requisite foundation to be more probably true than not true") (emphasis added).

It is within the court's discretion to determine the order of proof or the showing, if any, that is appropriate prior to the government's *introduction* of the coconspirator statements. *United States v. Arbelaez*, 719 F.2d 1453, 1460 (9th Cir. 1983) (concluding that it was not an abuse of discretion for the court to allow the government to introduce coconspirator statements prior to establishing prima facie the existence of a conspiracy). Courts have utilized various approaches regarding the order of proof. One such approach has been the provisional or conditional admission of the statement subject to it later being "connected up" at "the conclusion of the presentation of evidence," at which time the court must determine whether the government has established the requisite foundation (as set forth by the Ninth Circuit in *Larson*) to be more probably true than not true. *See* GRAHAM, 30B FEDERAL PRACTICE & PROCEDURE, EVIDENCE § 7025; MUELLER &

KIRKPATRICK, 4 FEDERAL EVIDENCE § 8:62, Procedure for Applying Coconspirator Exception (4th ed., updated May 2016); *Arbelaez*, 719 F.2d at 1460.

Another approach includes what has essentially been deemed a mini-trial or *James* hearing in advance of trial at which the court may consider each proffered coconspirator statement and determine whether the government has established the required foundational requirements as to each statement. *See* GRAHAM, FEDERAL PRACTICE & PROCEDURE, EVIDENCE § 7025 (citing *United States v. James*, 590 F.2d 575, 581-82 (5th Cir. 1979) (en banc)). In a third approach, which has been deemed the "middle course," the court requires the government to make a preliminary showing or summary of its evidence establishing the predicate facts, while deferring the final decision until the conclusion of the presentation of the evidence. *See* MUELLER & KIRKPATRICK, 4 FEDERAL EVIDENCE § 8:62; *see also United States v. Cox*, 923 F.2d 519, 526 (7th Cir. 1991) (the "preferable procedure would be to at least require the government to preview the evidence which it believes brings the statements within the coconspirator rule before delving into the evidence at trial").

This court adopts the "middle course" on the government's requisite showing prior to introduction of the coconspirator statements. In accordance with this approach, the court will preview prior to trial a summary of the coconspirator statements to be offered by the government. Following this preview, the court will determine which statements the government will be permitted to introduce, either through the testimony of a witness or by documentary evidence. Even though the ultimate finding as to admissibility will not be made until after the trial has commenced and perhaps as late as the close of the evidence, the witnesses will be permitted to testify about coconspirator statements and documents containing such statements will be published to the jury, subject to striking should the government not be able to meet its burden as to all requirements for admissibility. In this sense, the government's introduction of the statements which will have been previewed and approved by the court, will result in their conditional admission.

The court may at some point during trial, and prior to the close of the evidence, rule on whether the government has shown by a preponderance of the evidence two of the three prongs required for the admissibility of all of the proffered coconspirator statements, including that (1) the conspiracy existed when the statement was made; and (2) that the defendant had knowledge of, and participated in, the conspiracy. *Larson*, 460 F.3d at 1212. The court, however, will not determine until *after* the witness testifies and/or the documentary evidence containing the particular coconspirator statement is introduced whether or not the government has shown by a preponderance of the evidence that the statement was made "in furtherance" of the conspiracy. *See id.* A coconspirator statement will NOT be unconditionally admitted into evidence until the court has determined that all three *Larson* prongs have been satisfied as to that statement.

As set forth in *United States v. Coleman*, CR 11-904 PJH, and *United States v. Zaragoza*, CR 08-83 PJH, the court has established a protocol requiring the government to disclose the following information with a list of the coconspirator statements to be introduced at trial:

(1) the identity of the testifying witness and/or the source of the conspirator statement;

(2) a statement describing the witness and/or the source of the conspirator statement;

(3) a summary of the evidence showing that the proffering witness, if a coconspirator, knew about and participated in the conspiracy;

(4) the *specific* coconspirator statements to be introduced via that witness and/or the source of the conspirator statement;

(5) the identity of the declarant of *each* specific coconspirator statement; and

(6) a summary of the evidence showing that *each* declarant of the coconspirator statement(s) knew about and participated in the conspiracy.

Zaragoza, doc. no. 574 (Amended Order for Pretrial Preparation). The government must also provide particulars of when the proffered statement was made, to establish that it

was made during the relevant period. *Larson*, 460 F.3d at 1211 (requiring the government to establish that "the conspiracy existed when the statement was made"). This requirement may be satisfied by providing sufficient detail to determine whether the statements were made in the course of, and in furtherance of, the conspiracy, and does not require the government to identify the exact date and time that the statement was made. *See Coleman,* doc. nos. 97 (granting in part motion to clarify pretrial order) and 122 (clarifying pretrial order).

B. Discussion

The government timely filed its initial notice of coconspirator statements in compliance with the court's disclosure protocol. Doc. no. 166. Defendant timely filed objections to the coconspirator statements. Doc. no. 194. The government filed four supplemental notices of coconspirator statements, to which the court extends defendant's objections. Doc. nos. 174, 215, 223, 225.

The government prepared charts organizing the coconspirator statements by type of document, and specifying the date of the alleged coconspirator statement:

> (A) round sheets which tracked the individuals participating in each round, the order of bidding, amount of each coconspirator's terminal bid, and the winner of the round. *See* Appx. A; Suppl Appx. A; 2d Suppl. Appx. A.
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> (B) payment ledgers which listed the properties in which coconspirators participated in a round, and the amount of payoff on each property. *See* Appx. B and Suppl. Appx. B; 2nd Suppl. Appx. B.
>
> (C) emails regarding payments owed for rounds. *See* Appx. C.
>
> (D) consensual audio-video recordings of coconspirator statements. *See* Appx. D.
>
> (E) other documents containing coconspirator statements: notes on the memo lines of payoff checks, and other coconspirator notes relating to meetings and payoffs such as Outlook calendar entries noting the dates of payoffs and Wesley Barta's notes summarizing the results of rounds. *See*

Appx. E; Suppl. Appx. E; 2d Suppl. Appx. E.

(F) anticipated testimony of witnesses about what coconspirators said to reach agreements. The summary chart in Appendix F is taken from witness interview reports, which have not been reviewed or adopted by the witnesses, and are not verbatim transcripts. *See* Appx. F; Suppl. Appx. F.

To satisfy the first *Larson* prong, the government's brief in support of the notice establishes the existence of a conspiracy among competitors not to bid against each other at public auction, involving 3 steps: (a) refraining from bidding against each other for certain properties at the public auction; (b) negotiating payoffs at the secondary auctions, also known as round robins or rounds, or "step-aside" payments; (c) completing the sale by submitting a Receipt of Funds to the auctioneer, receiving the Trustee's Deed in the mail, and making and receiving payoffs, either by cash or check. Doc. no. 166 at 5-7 and Bond Decl.

To establish the second *Larson* prong, the government has sufficiently demonstrated that the defendant had knowledge of, and participated in, the conspiracy with the information provided in Appendices A through F, except as to anonymous documents which lack authentication, i.e., typewritten portions of ledgers that were seized from coconspirator Michael Marr's office, listed in Appendix B, and unidentified handwriting on round sheets that were produced by cooperating coconspirators, listed in Appendix A. The government contends that these documents written by unidentified authors are admissible as coconspirator statements because there is strong circumstantial evidence that the documents were made by conspirators in furtherance of the charged conspiracy. Doc. no. 166 at 13 (citing *United States v. Martinez*, 430 F.3d 317, 326 (6th Cir. 2005) ("An anonymous statement may be admissible under Rule 801(d)(2)(E) if circumstantial evidence permits a finding by a preponderance of the evidence that there was a conspiracy involving the author and the defendant, and the statement was made in the course and furtherance of the conspiracy."); *United States v.*

Helmel, 769 F.2d 1306, 1313 (8th Cir.1985) ("What is essential is that the government show that the unknown declarant was more likely than not a conspirator.").

The government relies on out of circuit authority to support its contention that it only needs to prove that the anonymous statements were necessarily written by someone in the conspiracy, without having to provide positive proof to identify the author to establish admissibility as coconspirator statements. Doc. no. 166 at 14 (citing *Helmel*, 769 F.2d at 1313) (requiring the government to show only that the unknown declarant was more likely than not a conspirator, without proving the declarant's identity). The Ninth Circuit has not, however, expressly adopted this standard. Current Ninth Circuit authority requires the government to identify, at least by a preponderance of the evidence, the declarant of anonymous statements that are proffered as coconspirator statements. In *United States v. Mouzin*, 785 F.2d 682, 692-93 (9th Cir. 1986), the court held that an anonymous cocaine distribution ledger found in the home of the defendant was not admissible as the statement of a coconspirator under Rule 801(d)(2)(E), for lack of a proper foundation, reasoning that "[k]nowledge of the identity of the declarant is essential to a determination that the declarant is a conspirator whose statements are integral to the activities of the alleged conspiracy." Here, the anonymous ledgers seized from Marr's office and unidentified handwriting on round sheets similarly suffer from lack of foundation to authenticate those documents.

To establish the admissibility of the anonymous documents as coconspirator statements, the government cites Ninth Circuit authority applying the preponderance of the evidence standard for identifying the author of anonymous statements, but those cases do not hold that anonymous statements are admissible as coconspirator statements based on evidence showing that the statements would have been made by an unidentified coconspirator, as the government seems to suggest. In *United States v. Gil*, 58 F.3d 1414, 1420 (9th Cir. 1995), the court held that the government proved by a preponderance of the evidence that anonymous ledgers were the defendants' statements, citing circumstantial evidence that the ledgers were located in the

defendants' residences and entries corresponded to surveilled activities. *See also United States v. Smith*, 893 F.2d 1573, 1578 (9th Cir. 1990) (holding that the evidence amply supported the government's theory that an anonymous calendar/drug ledger was authored by a named coconspirator and that the trial court did not err in admitting it into evidence under FRE 801(d)(2)(E)); *United States v. Schmit,* 881 F.2d 608, 610 (9th Cir. 1989) (holding that circumstantial evidence was sufficient to show that a named coconspirator (the defendant's son) was the author of anonymous handwritten notes under a preponderance of the evidence standard to show admissibility under FRE 801(d)(2)(E)). Unlike the ledgers at issue in *Gil* which were found in the defendants' home, or the anonymous documents admitted in *Florida* which were seized from the defendants' offices, the anonymous documents proffered by the government here were not located in Guillory's home or office, but rather seized from the offices of a defendant charged in another case or provided by a cooperating coconspirator. The government's argument that these documents were more likely than not authored by an unnamed participant in the conspiracy does not establish an adequate foundation for their admissibility.

With respect to anonymous round sheets and ledgers proffered as coconspirator statements, in the absence of a proper foundation for admissibility required by *Mouzin* and for authentication under FRE 901(a), the proffered statements by an "unidentified" author will not be admitted under FRE 801(d)(2)(E). *See, e.g.*, Appx. A, Exs. 123 and 145 (notes of unidentified coconspirator, highlighted in pink); Appx. B, Exs 70-74 and 250 (typed portions of ledgers by unidentified coconspirator).

Except for the anonymous coconspirator statements discussed above, the government has sufficiently specified (A) the round sheets, (B) payoff ledgers, (C) emails, and (E) other miscellaneous documents, by providing copies of those categories of documents. The government also provided transcripts of the excerpts of the (D) audio-video recordings containing the coconspirator statements, identifying those statements with sufficient specificity.

With respect to witness testimony, defendant objects to the notice of coconspirator statements provided in Appendix F for lack of specificity, particularly as to the time frame of the alleged coconspirator statements which are generally indicated only in years. Doc. no. 194 at 3. Defendant's objection based on lack of specificity is OVERRULED on the ground that the government provided highlighted portions of the underlying FBI witness interview reports to identify the coconspirator statements with sufficient specificity to give the defense notice of the anticipated witness testimony.

III. Jury Instructions

A. Jointly Proposed Instructions

The court adopts the jury instructions proposed jointly by the parties, doc. no. 191, and the pretrial rulings on instructions and the applicable final instructions given in *United States v. Joyce,* CR 14-607-4 PJH, doc. nos. 232, 255. The parties must file a final set of the jury instructions, reflecting the court's pretrial rulings on the disputed instructions and renumbered in the sequence given in *Joyce*, by the first day of trial, as well as email a blind copy without citations to the court's proposed order email address.

B. Disputed Instructions

The court rules on the instructions that remain subject to dispute as to defendant Guillory as follows:

1. Instruction No. 18: Bid Rigging

The government objects to including the following modification to the ABA model bid-rigging instruction, as it was given in *Florida*, as unnecessary: "An internal agreement only between owners and employees of the same company does not constitute a conspiracy." Doc. no. 191. Guillory opposes deletion of this modification. Because this instruction will assist the jury, given the alleged involvement of defendant's son, the court overrules the government's objection and adopts this modification in proposed Instruction No. 18. The remainder of proposed Instruction No. 18 will be given as modified in *Joyce*, doc. no. 255 ("Instruction No. 4").

2. Instruction No. 21: Owner or Superior-Individual Responsibility

The government proposes an instruction on the responsibility of an owner or manager to address the responsibility of defendant Guillory for the actions of his son. Defendant objects to this instruction as repetitive of other instructions and potentially in conflict with stipulated instruction No. 17 on Elements of the Bid Rigging Offense. He also argues that the government's proposed superior liability instruction "does not deal with the concept of authorized agents acting within the course and scope of their agency, aiders/abettors and/or co-conspirators," as contemplated in the indictment. Doc. no. 207 at 3.

The ABA model instruction (ABA Section of Antitrust Law, *Model Jury Instructions in Criminal Antitrust Cases* (2009) at 101-102) that is cited by the government specifically refers to corporate responsibility, and the government does not provide any authority extending this corporate responsibility instruction to individuals on a quasi-respondeat superior theory. The government cites *United States v. Wise*, 370 U.S. 405, 416 (1962), where the Court held that a corporate officer is subject to prosecution under § 1 of the Sherman Act "whenever he knowingly participates in effecting the illegal contract, combination, or conspiracy—be he one who authorizes, orders, or helps perpetrate the crime—regardless of whether he is acting in a representative capacity." The government also cites *United States v. Brown*, 936 F.2d 1042, 1047 (9th Cir. 1991), where the Ninth Circuit upheld the following instruction, based on the holding of *Wise* recognizing that corporate officers may be held criminally liable for the illegal actions of subordinates if they knowingly authorized or consented to such behavior:

> Defendants Hal Brown, Jr. and Michael F. Tobey were officials of Gannett and Foster & Kleiser with subordinate employees under their supervision during the time of their alleged involvement in the conspiracy charged in the Information.
>
> To find the defendant liable for the acts of the subordinate as distinguished from his own acts, you must find beyond a reasonable doubt that the defendant knew of the existence of the conspiracy and knowingly authorized[,] ordered or consented to the participation of a subordinate in that

> conspiracy. A company official who knowingly participates in the conspiracy in this manner is liable to the same extent as any other member of the conspiracy.

The government has not cited authority extending the "knowingly authorized" standard for vicarious criminal liability outside the corporate context, where an officer may try to avoid individual criminal liability distinct from the corporation's liability. The ABA commentary reflects that the model instruction "confirms the common sense rule that the fact that actions are taken with intent to further corporate business does not relieve the agent of criminal responsibility, and conversely that criminal liability attaches not because of a corporate officer's position, but because the officer acts or fails to act in conformity with the duty imposed by statute." ABA Section of Antitrust Law, *Model Jury Instructions in Criminal Antitrust Cases* (2009) at 101-102. Those concerns about responsibility in the corporate environment, and distinguishing between corporate and corporate officer responsibility, are not present here. The government's proposed instruction No. 21 is therefore STRICKEN.

3. Instruction No. 37: Testimony of Witnesses Involving Special Circumstances - Immunity, Benefits, Accomplice, Plea

The court ADOPTS proposed Instruction No. 37 as unopposed. Doc. no. 207 at 3. At the close of evidence, the parties are instructed to modify this instruction to add the specific names of the relevant government witnesses.

IV. Juror Questionnaire and Voir Dire

The court will issue a modified version of the written juror questionnaire that was given in *Joyce,* doc. no. 228-1, 234, a copy of which is attached as an appendix to this order. The court will conduct the voir dire, and will allow 20 minutes of follow-up questions per side.

V. Verdict Form

The court ADOPTS the proposed verdict form jointly proposed by the parties. Doc. no. 183.

IT IS SO ORDERED.

Dated: March 17, 2017

PHYLLIS J. HAMILTON
United States District Judge